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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

C.M.A. No. 8 of 2011

and

M.P. No. 1 of 2011

The Oriental Insurance Co. Ltd.,
Branch Manager,
No.90-A, Thuraiyur Salai
Namakkal District.

... Appellant/ 2nd Respondent

vs.

1. Parthasarathy
2. Sakthivel

...1st Respondent/ Petitioner
.. 2nd Respondent/Respondent

These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.07.2010 in M.C.O.P. No. 397 of 2008 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal District.

For Appellant : Mr. J.Chandran

For Respondents : Mr. R. Jayaprakash
for R1/ Caveator

R-2 .. ex-parte

J U D G M E N T

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate), Namakkal District, vide judgment dated 30.07.2010 in M.C.O.P. No. 397 of 2008, the Insurance Company has come up with the present appeal.

2. It is a case of injury. On 15.04.2007, when the claimant was travelling in his motor cycle, on Thottiyam to Kattuputhur Main Road, near the burial ground, a tempo van bearing Registration No. TN 36 A 7060, driven by its driver in a



rash and negligent manner, dashed against the motorcycle. Due to the accident, the claimant sustained fracture on the right hand humerus and right ring finger and grievous injuries all over the body. He was taken to C.M. Hospital, Namakkal and underwent treatment as inpatient for 20 days. FIR was registered against the driver of the car. The injured claimant filed a claim for compensation for a sum of Rs. 7,00,000/-.

3. The Tribunal, based on the oral evidence of the witnesses, the F.I.R. and also taking note of the fact that the driver of the tempo van was having valid driving licence to drive the van, came to the conclusion that the driver of the tempo van was responsible for the accident and consequently liability was fixed on the Insurance Company, being the Insurer of the van. On this issue, learned counsel for the appellant has not placed any material to come to a different conclusion from that of the conclusion arrived by the Tribunal.

4. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No	Heading	Amount awarded by the Tribunal
1	Loss of income	Rs. 3,27,400.00
2	Pain and Sufferings	Rs. 20,000.00
3	Extra Nourishment	Rs. 10,000.00
4	Transport Expenses	Rs. 7,000.00
5	Medical Expenses	Rs. 52,558.00
	Total	Rs. 4,16,458.00

5. Learned counsel appearing for the appellant/Insurance Company, mainly contended that the Tribunal ought not to have accepted 40% of the permanent disability fixed by the Doctor, since no implantation was involved in the surgery. He further contended that multiplier should not have been adopted by the Tribunal for the minor injuries suffered by the claimant. In the absence of any documentary evidence, the income of the injured should not have been considered as Rs.4000/- per month. Hence, the Tribunal has erred by awarding an exorbitant compensation, for the simple injuries sustained by the claimant and hence the Insurance Company has filed this Appeal seeking for reduction of the compensation granted by the Tribunal.

6. Per contra, learned counsel appearing for the



claimant submitted that the injured was working as a lorry cleaner and the injuries suffered in the accident would certainly have an impact in his avocation. Since the injured underwent two surgeries in the right hand, he is unable to lift heavy things and do any kind of work with his right hand. He further submitted that considering the nature of injuries and the period of treatment, the Tribunal has awarded the compensation, which is just and reasonable and sought for dismissal of the appeal.

7. As rightly pointed by the learned counsel for the appellant Insurance Company, the Tribunal should not have adopted multiplier method, when the injured has failed to prove with documentary evidences that there is an impact in his avocation. Instead, at the rate of Rs. 3000/- per percentage, for 40% permanent disability, a compensation of Rs.1,20,000/- is granted by this Court, towards Permanent Disability. Due to the fracture on the shoulder and the right fingers, the injured would have undergone severe pain and sufferings, for which the compensation granted towards Pain and Sufferings is too low and hence the same is enhanced to Rs.50,000/-. Since the claimant was hospitalised for about 20 days as inpatient, he would have been necessarily assisted by an Attender. But, no amount has been granted by the Tribunal towards "Attender charges" and "loss of amenities" to the injured, in spite of his long period of treatment and the fracture. Hence, this Court is inclined to modify the compensation awarded by the Tribunal as follows:-

Sl. No	Heads	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.3,27,400.00	--
2	Permanent Disability	--	Rs. 1,20,000.00
3	Pain and Sufferings	Rs. 20,000.00	Rs. 50,000.00
4	Extra Nourishment	Rs. 10,000.00	Rs. 25,000.00
5	Transport Expenses	Rs. 7,000.00	Rs. 10,000.00
6	Medical Expenses	Rs. 52,558.00	Rs. 52,558.00
7	Attender Charges	--	Rs. 20,000.00
8	Loss of Amenities	--	Rs. 25,000.00
	Total	Rs. 4,16,458.00	Rs. 3,02,558.00

There is no serious objection in respect of the interest granted at 7.5% per annum.

8. Accordingly, the Civil Miscellaneous Appeal is allowed as follows:-



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(i) The award of the Tribunal is reduced to Rs.3,02,558/- from Rs.4,16,458/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The appellant /Insurance Company is directed to deposit the entire award amount as ordered by this Court, with interest and costs, less the amount already deposited, to the credit of M.C.O.P.No.397 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Namakkal within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the claimant is permitted to withdraw the award amount on filing necessary application before the Tribunal.

(v) It is also made clear that the award amount shall be paid to the respondent/claimant by the Tribunal in the form of a crossed Account Payee Cheque, favouring only the claimant and it should not be issued in favour of any other person/Company. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

avr

To

The Chief Judicial Magistrate
Motor Accidents Claims Tribunal
Namakkal

1 cc to Mr.R.Jayaprakash, Advocate, sr.15786

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kra 07.06.2016